

STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

JOHN DOE,

Plaintiff,

-against-

RICHARD M. TEBBANO and SHENENDEHOWA
CENTRAL SCHOOL DISTRICT,

Defendants

Index No.

Date Purchased:

SUMMONS

Plaintiff designates

Saratoga County as the
place of trial

The basis of venue is:

Defendant Shenendehowa
Central School District's
place of business

To the above named Defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 25, 2019
Albany, New York

O'CONNELL AND ARONOWITZ

By: s/Pamela A. Nichols
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF SARATOGA

JOHN DOE,

Plaintiff,

-against-

COMPLAINT

Index No.

RICHARD M. TEBBANO and SHENENDEHOWA
CENTRAL SCHOOL DISTRICT,

RJI No.

Defendants.

Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

PARTIES

1. At all times material to this Complaint, Plaintiff resided in the State of New York.

2. Whenever reference is made to any Defendant entity, such reference includes that entity, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

3. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

4. At all times material, Defendant Shenendehowa Central School District (hereinafter "Shenendehowa") was and continues to be a public school district located in

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the County of Saratoga and State of New York.

5. At all times material, Tesago Elementary School was and continues to be a public school owned, controlled, supervised, operated and managed by Defendant, Shenendehowa.

6. At all times material, Richard M. Tebbano ("Tebbano") was an employee of Defendant, Shenendehowa.

JURISDICTION

7. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendant Shenendehowa Central School District is a quasi- municipal corporation created and organized by state legislatures and charged with the administration of public schools in the State of New York and because the unlawful conduct complained of herein occurred in New York.

8. Venue is proper pursuant to C.P.L.R. § 504 in that Defendant Shenendehowa is situated in Saratoga County.

9. This complaint is brought under the Child Victims Act and, as such, the filing of a Notice of Claim is not required.

10. The limitations of Article 16 of the CPLR do not apply because one or more of the exceptions set forth in. CPLR 1601 and/or 1602 apply.

FACTS

11. At all times material, Defendant Tebbano was employed by Defendant Shenendehowa and remained under the direct supervision, employ, and control of

Defendant Shenendehowa.

12. At all times material, Defendant Shenendehowa placed Tebbano in positions where he had access to and worked with children as an integral part of his work.

13. At all times material, Defendant Shenendehowa placed and retained Tebbano at Tesago Elementary School as a teacher.

14. At all times material, Plaintiff was a student at Tesago Elementary School.

15. At all times material, Plaintiff, as a minor and vulnerable child, was dependent on Defendants Shenendehowa and Tebbano.

16. At all times material, Defendants Shenendehowa and Tebbano had custody of Plaintiff and were entrusted with the safety of Plaintiff and, therefore, had responsibility for and authority over Plaintiff.

17. From approximately 1977 to 1984, when Plaintiff was approximately 10 to 17 years old, Tebbano engaged in unpermitted sexual contact with Plaintiff.

18. Defendant Shenendehowa knew or should have known that Tebbano was a danger to children, and, the Plaintiff.

19. Prior to and during the sexual abuse of Plaintiff, Defendant learned or should have learned that Tebbano was not fit to work with children.

20. Defendant Shenendehowa became aware, or should have become aware of Tebbano's propensity to commit sexual abuse and of the risk to Plaintiff's safety.

21. Defendant Shenendehowa knew or should have known that they did not have sufficient information about whether Tebbano had a propensity to commit sexual abuse.

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22. Defendant Shenendehowa knew or should have known that there was a risk of the sexual abuse of children attending Tesago Elementary School.

23. Defendant Shenendehowa knew or should have known that they did not have sufficient information about whether there was a risk of child sex abuse for children attending Tesago Elementary School.

24. Defendant Shenendehowa owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk of abuse in general in its schools.

25. Defendant Shenendehowa owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk that Tebbano posed to minor children, and in particular, the Plaintiff.

26. Defendant Shenendehowa owed a duty to Plaintiff to protect Plaintiff from harm because Defendant Tebbano's actions created a foreseeable risk of harm to Plaintiff.

27. As a vulnerable child attending Tesago Elementary School, Plaintiff was a foreseeable victim.

28. As a vulnerable child who Tebbano had access to through Tebbano's employment with Defendant Shenendehowa, Plaintiff was a foreseeable victim.

29. Defendant Shenendehowa breached its duties to Plaintiff.

30. Defendant Shenendehowa breached its duty to Plaintiff by actively maintaining and employing Tebbano in a position of power and authority through which Tebbano had access to children, including Plaintiff, and power and control over children, including Plaintiff.

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31. Defendant Shenendehowa failed to use ordinary care in determining whether its facilities were safe and/or determining whether it had sufficient information to represent its facilities as safe.

32. Defendant Shenendehowa's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, or reasonably foreseeable failure to have sufficient policies and procedures to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child sex abuse, failure to have any outside agency test its safety procedures, failure to protect the children attending its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount and type of information necessary to represent the school and its employees as safe, and failure to train its employees properly to identify signs of child sexual abuse by fellow employees.

33. Defendant Shenendehowa and/or its agents violated their legal duty by failing to report known and/or suspected abuse of children by Tebbano to law enforcement.

34. As a direct result of Defendant Shenendehowa's negligence, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation and/or physical, personal and psychological injuries.

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35. As a direct result of Defendant Shenendehowa's negligence, Plaintiff was prevented, and will continue to be prevented, from performing normal daily activities and obtaining the full enjoyment of life; and/or has incurred and will continue to incur expenses for psychological treatment, therapy, and counseling, and, on information and belief has and/or will incur loss of income and/or loss of earning capacity.

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT SHENENDEHOWA
CENTRAL SCHOOL DISTRICT:
NEGLIGENCE

36. Plaintiff repeats all prior allegations.

37. Defendant Shenendehowa owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

38. Defendant Shenendehowa owed Plaintiff a duty of reasonable care because Defendant Shenendehowa had a special relationship with Plaintiff.

39. Defendant Shenendehowa had a duty arising from its special relationship with Plaintiff, to properly train and supervise its employees, including Tebbano.

40. By undertaking the custody and supervision of the minor Plaintiff, Defendant Shenendehowa had a fiduciary relationship with the minor Plaintiff.

41. As a result of Plaintiff being a minor, and by Defendant Shenendehowa's undertaking of the care and guidance of then vulnerable minor Plaintiff, Defendant Shenendehowa held a position of empowerment over Plaintiff.

42. Defendant Shenendehowa had an in loco parentis relationship with Plaintiff and owed Plaintiff a duty to protect Plaintiff from injury.

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43. By establishing, operating and/or administrating Tesago Elementary School, accepting the minor Plaintiff as a participant in its programs, holding its facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff in loco parentis, and by virtue of its fiduciary relationship with Plaintiff, Defendant Shenendehowa entered into an express and/or implied duty to properly supervise, care for and protect Plaintiff and provide a reasonably safe environment for Plaintiff and the other children attending its schools.

44. By establishing and operating Tesago Elementary School and by accepting the enrollment and participation of the minor Plaintiff in its educational programs, Defendant Shenendehowa owed Plaintiff a duty to properly supervise, care and protect Plaintiff from harm and generally foreseeable dangers.

45. Defendant Shenendehowa had a duty to exercise the same degree of care over Plaintiff and the other minor students under its control as a reasonably prudent parent would have exercised under similar circumstances.

46. Defendant Shenendehowa owed Plaintiff a duty to protect Plaintiff from harm because Defendant Shenendehowa was aware of Plaintiff's presence on its property and aware that Tebbano posed a danger on Defendant Shenendehowa's property.

47. Defendant Shenendehowa breached its duties to Plaintiff by failing to use reasonable care.

48. By hiring and entrusting Tebbano with the care and supervision of minor children like Plaintiff, Defendant Shenendehowa breached its duty of care by negligently

representing to Plaintiff and his family that Tebbano was safe, properly trained and capable of keeping Plaintiff and other minor students free from harm.

49. Defendant Shenendehowa's failures include, but are not limited to, representing that Tebbano was fit to supervise and provide care for Plaintiff and other minor children; failing to properly supervise Tebbano; failing to properly supervise Plaintiff; and failing to protect Plaintiff from a known danger.

50. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT SHENENDEHOWA
CENTRAL SCHOOL DISTRICT:
NEGLIGENT HIRING

51. Plaintiff repeats all prior allegations.

52. At all times material, Tebbano was employed by Defendant Shenendehowa and was under Defendant Shenendehowa's direct supervision, employ and control when he committed the wrongful acts alleged herein.

53. Tebbano engaged in the illegal conduct while acting in the course and scope of his employment with Defendant Shenendehowa and/or accomplished the sexual abuse by virtue of his job-created authority.

54. Defendant Shenendehowa negligently hired and/or negligently placed Tebbano in a position to cause foreseeable harm which Plaintiff would not have been

subjected to had Defendant Shenendehowa taken reasonable care in its hiring and/or investigation of Tebbano.

55. Defendant Shenendehowa knew or should have known of Tebbano's propensity for the type of behavior which resulted in Plaintiff's injuries.

56. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT SHENENDEHOWA
CENTRAL SCHOOL DISTRICT:
NEGLIGENT TRAINING AND SUPERVISION

57. Plaintiff repeats all prior allegations.

58. At all times material, Tebbano was employed by Defendant Shenendehowa and was under Defendant Shenendehowa's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

59. Tebbano engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant Shenendehowa and/or accomplished the sexual abuse by virtue of his job-created authority.

60. Defendant Shenendehowa had a duty, arising from its employment of Tebbano, to ensure that Tebbano did not sexually abuse children.

61. Defendant Shenendehowa had a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to

detect, prevent, and address inappropriate behavior and conduct between its employees and children.

62. Defendant Shenendehowa was negligent in the training, supervision, and instruction of its employees, including Tebbano.

63. Defendant Shenendehowa failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed.

64. Defendant Shenendehowa was negligent in failing to supervise, monitor, chaperone, and/or investigate Tebbano and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Tebbano's sexual abuse of Plaintiff.

65. Defendant Shenendehowa failed to establish policies, procedures, training, manuals and other instructive materials and failed to publish such materials to all employees and administrators.

66. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

AS AND FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT SHENENDEHOWA
CENTRAL SCHOOL DISTRICT:
NEGLIGENT RETENTION

67. Plaintiff repeats all prior allegations.

68. Defendant Shenendehowa became aware or should have become aware of Tebbano's propensity for child sexual abuse and failed to take any further action to remedy the problem and/or failed to investigate or remove Tebbano from working with children.

69. Defendant Shenendehowa negligently retained Tebbano with knowledge of Tebbano's propensity for the type of behavior which resulted in Plaintiff's injuries.

70. Defendant negligently and/or recklessly retained Tebbano in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant Shenendehowa acted reasonably.

71. In failing to timely remove Tebbano from working with children or terminate the employment of Tebbano, Defendant negligently and/or recklessly failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances and created an increased risk of future harm.

72. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST RICHARD M. TEBBANO: ASSAULT AND
BATTERY

73. Plaintiff repeats all prior allegations.

74. Defendant Tebbano assaulted and battered Plaintiff by making offensive and physical harmful contact with Plaintiff's body through physical sexual contact.

75. Defendant Tebbano's conduct was intentional and designed to cause physical and psychological harm to Plaintiff and place him in imminent fear of physical injury.

76. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

77. Defendant Tebbano's conduct was intentional, reckless, grossly negligent, willful, wanton, oppressive, and done with actual malice and disregard for Plaintiff's rights and safety.

78. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

79. As a result, Plaintiff is entitled to an award of substantial punitive damages in a sum to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION
AGAINST RICHARD M. TEBBANO:
INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS

80. Plaintiff repeats all prior allegations.

81. Defendant Tebbano knew, or in the exercise of reasonable care should have known, that his intentional and egregious conduct, as described above, would cause Plaintiff serious emotional distress.

82. In committing the acts alleged above, Defendant Tebbano acted with willful, wanton, reckless, intentional, and deliberate disregard for the likelihood that

Plaintiff would suffer severe emotional distress as a direct and proximate result of the sexual abuse, sexual assault, and battery.

83. Defendant Tebbano's conduct as alleged above was extreme and outrageous and went beyond all bounds of decency.

84. As a direct and proximate result of Defendant Tebbano's wrongful actions, sexual assaults, battery and sexual abuse as described above, Plaintiff suffered severe emotional distress.

85. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

86. Defendant Tebbano's conduct was intentional, reckless, grossly negligent, willful, wanton, oppressive, and done with actual malice and disregard for Plaintiff's rights and safety.

87. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

88. As a result of the foregoing, Plaintiff is entitled to an award of substantial punitive damages in a sum to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION
AGAINST RICHARD M. TEBBANO:
NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS

89. Plaintiff repeats all prior allegations.

90. Defendant Tebbano knew, or in the exercise of reasonable care should have known, that his negligent and reckless conduct, as described above, would cause Plaintiff serious emotional distress.

91. In committing the acts alleged above, Defendant Tebbano acted with wanton and reckless disregard for the likelihood that Plaintiff would suffer severe emotional distress as a direct and proximate result of the sexual abuse, sexual assault, and battery.

92. Defendant Tebbano's conduct as alleged above was extreme and outrageous and went beyond all bounds of decency.

93. As a direct and proximate result of Defendant Tebbano's wrongful actions, sexual assaults, battery and sexual abuse as described above, Plaintiff suffered severe emotional distress.

94. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

95. Defendant Tebbano's conduct was reckless, grossly negligent, wanton, oppressive, and done with actual malice and disregard for Plaintiff's rights and safety.

96. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

97. As a result of the foregoing, Plaintiff is entitled to an award of substantial punitive damages in a sum to be determined at trial.

AS AND FOR AN EIGHTH CAUSE OF ACTION
AGAINST DEFENDANT RICHARD M. TEBBANO:
FALSE IMPRISONMENT

98. Plaintiff repeats all prior allegations.

99. In committing the acts alleged above, Defendant Tebbano falsely and unlawfully imprisoned Plaintiff against his will.

100. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering.

101. Defendant Tebbano's conduct was intentional, reckless, grossly negligent, willful, wanton, oppressive, and done with actual malice and disregard for Plaintiff's rights and safety.

102. As a result of the foregoing, Defendant Shenendehowa caused Plaintiff to sustain physical, emotional, and psychological injuries, along with pain and suffering in a substantial sum of money.

103. As a result of the foregoing, Plaintiff is entitled to an award of substantial punitive damages in a sum to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff demands judgment against the Defendants herein, jointly and severally, on all Causes of Action herein, in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest as allowed by statute, the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

Dated: November 25, 2019

O'CONNELL AND ARONOWITZ

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